

LAWRENCE DUPUIS

IBLA 86-1046

Decided October 2, 1987

Appeal from a decision of the Butte District Office, Bureau of Land Management, adjusting the rental rate for small tract lease M 015795.

Affirmed.

1. Appraisals -- Federal Land Policy and Management Act of 1976:
Leases -- Fees -- Small Tract Act: Appraisals -- Small Tract Act:
Renewal of Lease

A decision imposing fair market rental for a small tract lease will be affirmed where the appraisal determining the fair market rental value is conducted following established criteria, and the lessee fails to show error in the appraisal methods or present convincing evidence that the charges are excessive.

APPEARANCES: Lawrence Dupuis, Divide, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lawrence Dupuis appeals from a decision of the Butte District Office, Bureau of Land Management (BLM), dated March 13, 1986, adjusting the rental rate for small tract lease M 015795 issued pursuant to the Small Tract Act, 43 U.S.C. § 682(a) (1976) (repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789).

This 1-acre tract described as lot 12, sec. 31, T. 1 N., R. 10 W., principal meridian, Silver Bow County, Montana, was originally leased to Leslie E. Andersen in 1955. Andersen assigned the lease to Dupuis in 1967, and BLM approved this assignment in 1968. On December 15, 1980, BLM issued a decision approving Dupuis' application to renew the small tract lease for a term of 10 years. In its renewal decision BLM specified that the lease rental would be reviewed at the end of 5 years, at which time it would impose such new charges deemed reasonable and proper, commencing with the sixth year.

The property was appraised by BLM in 1986 and its findings are contained in an appraisal report dated February 10, 1986. The appraiser described the property as follows:

The subject land is a 1.00 acre tract located in Silver Bow County about 3 miles east of Wise River, Montana. It is situated in the Big Hole River Valley and the southern boundary of this tract is within 200 feet of the river bank. Access to the subject tract consists of about 1/2 mile of graveled Forest Service road and 1 mile of dirt trail across private, state and federal lands. The subject is not provided with complete legal access. However, the road to the subject tract is not physically closed, and the private landowner plans to leave it open in the future. Topography varies from moderate slopes near the river to steeper slopes near the back of the lot. Soils are thin with rock outcroppings in the area. Vegetative cover is primarily Douglas fir with large juniper. Domestic water is not developed on the site. Electricity is available on the site. All of the improvements which are located on this land were placed there by the former lessee, Mr. Leslie E. Andersen. Natural screening by rock and conifers provide a secluded setting for the cabin site, but also restrict the view of the surrounding area from the cabin itself. However, a very scenic view of the surrounding mountains and river bottom is provided from the southside of the tract about 100 feet away from the cabin.

The property was appraised using the market data approach. In his report the appraiser stated that no lease data could be found in the area. He then selected four sales from the market for comparison with the subject tract and employed the following comparative factors in evaluating the subject land: time, size, location and access, physical characteristics (including developed domestic water source, topography, and presence of utilities), recreation, and aesthetics. ^{1/} After comparing the subject tract with the four sales, and making some adjustments, the appraiser valued the property at \$ 3,000.

In calculating the rental, the appraiser stated that the United States is entitled to a fair return on the value of the land based on prevailing interest rates, and used a 10-percent rate to calculate the return. He estimated that due to limitations placed on the lessee by stipulations in the lease, only 80 percent of the rights are conveyed with the lease. Using these figures, the appraiser calculated the annual rental at \$ 240. In its

^{1/} This information was included in "TABLE 2 - ADJUSTMENTS" of the appraisal report:

Date of Sale	Sales		Physical		Location/ Character-		Recreation		
<u>Sale</u>	<u>Acres</u>	<u>Price</u>	<u>Time</u>	<u>Size</u>	<u>Access</u>	<u>istics</u>	<u>Aesthetics</u>	<u>Overall</u>	
9/11/84	2	0	0	-	-	0	-		
10/5/84	8.0	17,500	0	+	-	-	0	-	
2/5/86	4.61	12,900	0	+	-	0	+	+	
2/5/86	4.65	13,00	0	+	-	0	+	+	

March 13, 1986, decision BLM established the new rental charge for the lease at \$ 240 per year. The previous yearly rental charge had been \$ 165.

In his statement of reasons, Dupuis contends that the charges are excessive because there is no public access to the land, but only limited access through private property which could be closed off at any time. Dupuis asserts that he is a disabled veteran living on a fixed income and therefore the rental increase imposes economic hardship on him.

[1] Appraisals will be upheld if there is no error in the appraisal methods utilized by BLM or the appellant fails to show convincing evidence that the charges are excessive. Blue Mesa Road Association, 89 IBLA 120 (1985); Clinton Impson, 83 IBLA 72 (1984).

In the appraisal report, the appraiser addressed the access issue. In preparing his appraisal, the appraiser compared the subject site with four comparable sales in the vicinity. In each case he rated the subject "inferior" to the sale for the location/access factor. This rating is reflected in "TABLE 2 - ADJUSTMENTS" of the appraisal report. ^{2/} The appraisal report contains the following discussion under the heading "Correlation and Conclusion of Value":

The subject does not contain legal access. However, no extra adjustment has been made because of this fact. Physical access by vehicle is allowed to the cabinsite, and it is not anticipated that access will be restricted in the future. If access is blocked sometime in the future, at that date, the appraisal would have to be adjusted to reflect this change in the access/location factor.

The subject is rated inferior to Sale No. 1 at \$ 10,000 or \$ 5000 per useable building site. This sale has legal access, a well and more level topography than the subject.

The subject is rated inferior to Sale No. 2 at \$ 17,500 or \$ 4375 per useable building site. This sale also has legal access, a well, and more level topography than the subject.

The subject is rated slightly superior to Sale Nos. 3 and 4 at \$ 2798 and \$ 2800 per acre or per useable building site respectively. The subject is superior in size and slightly better in recreational value because of its close location to the Big Hole River. Therefore, the subject is valued somewhat higher in the market place than Sales 3 and 4.

It is the opinion of this appraiser that these sales provide a reliable indication of \$ 3000.00 for the subject tract. [Emphasis added.]

^{2/} See note 1, *supra*.

This discussion clearly indicates that the appraiser recognized the importance of the location/access factor. He considered that factor in determining that the subject was overall inferior to both Sale No. 1 and Sale No. 2, in part because each of those sales involved parcels with legal access. The appraisal report, therefore, indicates that the appraiser made adjustments for the lack of legal access of the subject in arriving at his fair market rental value.

This conclusion is supported by the above-quoted emphasized language. The appraiser states that he made no extra adjustment because of the lack of legal access. Implicit in that statement is that he made an adjustment. He stated that vehicular access to the subject site is available, and it is not anticipated that access will be restricted in the future. This conclusion was apparently based on his personal knowledge, since he further stated in the report that "[t]he private landowner plans to leave it open in the future." Moreover, the record indicates that appellant and his predecessor in interest have had access to the site since 1955.

Under these circumstances, the appraiser was justified in not making an extra adjustment because of lack of legal access. ^{3/} Appellant has provided no evidence that BLM erred in its appraisal methods. Appellant's subjective belief that the rental is excessive does not establish that it is. Appellant has presented no objective evidence that the rental is excessive.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Butte District Office is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

^{3/} The appraisal report states that if access is blocked in the future, a downward adjustment in the rental would be necessary. We agree. Should access be impaired in the future, we direct BLM to make an appropriate adjustment.

ADMINISTRATIVE JUDGE MULLEN DISSENTING:

The majority holds that the appraisal method was correct. I cannot. Our disagreement stems from an interpretation of the phrase: "The subject does not contain legal access. However no extra adjustment has been made because of this fact." This phrase is found in that portion of the appraisal report entitled "TABLE 2 -- ADJUSTMENTS." The majority states that this phrase "indicates the appraiser made adjustments for the lack of legal access of the subject in arriving at fair market value."

The majority then attempts to support this statement by focusing on the term "extra" without noting the entire context of Table 2, stating that "implicit in that statement is that he made an adjustment." In doing so they ignore the fact that Table 2 noted adjustments for the existence of wells, more level topography, the available number of building sites, recreational value, and size. "However, no extra adjustment was made because the subject does not contain legal access." I cannot reach as far as the majority opinion to justify affirming the decision. I would remand the case for adjustment of the fair market value to reflect the fact that lessee may be barred from gaining legal access to the property at any time without cause.

I have two reasons for doing so. The first is the fact that legal access to a tract of land does not exist. This has a real and present effect upon the fair market rental value of the land. In a case such as this, the mere possibility that access may be barred at any time clearly lessens the value of the tract. The second reason is that the lessee now has access because the present landowner plans to leave the access route open in the future. Thus, by rating the "contingency" and offering the lease on that basis, rather than providing for a reopener in the contract if access is barred, the "risk of loss" is placed upon the lessee. As it now stands, the lessee and the landowner can "agree" to have access barred, the lessee can insist upon re-evaluation by BLM, and the fair market rental value would necessarily be reset at the fair market rental value of a tract for which there is no access.

R. W. Mullen
Administrative Judge

